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IN THE

Supreme Court of the United States

TECK COMINCO METALS, LTD.,

Petitioner,

v.

JOSEPH A. PAKOOTAS, DONALD R. MICHEL, AND STATE OF WASHINGTON,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AS *AMICUS CURIAE* IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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INTEREST OF *AMICUS CURIAE*[1]

The Chamber of Commerce of the United States of America (the "Chamber") is the world's largest business federation, representing an underlying membership of more than three million U.S. businesses and organizations from every region of the country. An important function of the Chamber is to advocate its members' interests in matters of national concern before all branches and at all levels of government. In this role, the Chamber has often filed briefs as *amicus curiae* before federal and state courts, including before this Court.

The Chamber seeks to highlight in this brief the importance of the present case to the U.S. business community and the negative consequences—both diplomatic and economic—that would flow from allowing the Ninth Circuit's flawed and expansive interpretation of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") to stand.

The complex problem of transboundary pollution has historically been addressed through a variety of bilateral and multilateral diplomatic mechanisms. By displacing these cooperative arrangements in favor of piecemeal litigation that projects U.S. environmental regulations abroad, the Ninth Circuit's ruling, if allowed to stand, not only would interfere with the foreign affairs prerogatives of the political branches of government, but also would disrupt the settled expectations of the business community.

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[1] No person other than the amicus curiae, its members, or its counsel has made any monetary contribution to the preparation or submission of this brief. Further, no counsel for any Petitioner or Respondent authored this brief in whole or in part. Counsel of record for both parties have consented to the filing of this brief *amicus curiae*, and the letters of consent have been filed with the Clerk.

Further, by extending CERCLA's statutory reach to activities carried out by a foreign company on foreign soil, the Ninth Circuit's decision risks provoking foreign governments to attempt to impose similar liability on U.S. companies for activities those companies undertake within the United States' borders. Such retaliation would seriously damage the interests of the Chamber's members doing business in the border regions of the United States and would inject uncertainty and unpredictability into the regulatory framework within which they operate.

The Chamber has a vital interest in promoting a predictable legal environment for its members—something that is seriously threatened by the Ninth Circuit's unprecedented expansion of CERCLA liability in this case.

BACKGROUND AND INTRODUCTION

This case raises an issue of critical importance to this nation's business community: the applicability of U.S. environmental laws to the conduct of foreign persons that takes place wholly within the sovereign territory of a foreign nation. This Court has long recognized – and reaffirmed just days ago – that acts of Congress are presumed "to apply only within the territorial jurisdiction of the United States," unless a "clearly expressed" contrary intention is apparent from the legislation. *EEOC* v. *Arabian Am. Oil Co.* ("*Aramco*"), 499 U.S. 244, 248 (1991) (quoting *Foley Bros. Inc.* v. *Filardo*, 336 U.S. 281, 285 (1949) and *Benz* v. *Compania Naviera Hidalgo, S.A.*, 353, U.S. 138, 147 (1957)); *Microsoft Corp.* v. *AT&T Corp.*, No. 05-1056, slip op. at 15-16 (U.S. Apr. 30, 2007). Instead of confronting directly the issue of whether Congress intended liability under CERCLA to apply to conduct that takes place exclusively outside the United States, the Ninth Circuit sidestepped the presumption against extraterritoriality altogether. See *Pakootas* v. *Teck Cominco Metals Ltd.*, 452 F.3d 1066, 1078 (9th Cir. 2006) (determining that the presumption against extraterritoriality

did not apply because the passive "release" of heavy metals from slag occurred domestically). That decision is not only inconsistent with existing law but also gives rise to serious diplomatic and economic implications; it requires this Court's review.

Notwithstanding the Ninth Circuit's attempt to avoid the question whether CERCLA can be applied extraterritorially, its decision implicates the very concerns that the presumption against extraterritorial statutory application was designed to guard against—namely, the "unintended clashes between our laws and those of other nations which could result in international discord." *Aramco*, 499 U.S. at 248. The question of whether to apply the presumption is more than simply an academic exercise. The Ninth Circuit's ruling extends CERCLA liability to a Canadian corporation whose conduct took place exclusively in the territory of Canada in compliance with Canadian law. This is a development with serious consequences for diplomatic relations between Canada and the United States, as well as for businesses on both sides of the border. And the potential consequences of the decision below extend well beyond the United States' relationship with its closest neighbor. The importance of the scope of the presumption against extraterritoriality, and the ramifications of the Ninth Circuit's failure to apply that presumption, make the need for this Court's review particularly evident.

REASONS FOR GRANTING THE PETITION

Almost a century ago, in *American Banana Co.* v. *United Fruit Co.*, 213 U.S. 347, 356 (1909), Justice Holmes articulated the basic premise upon which the presumption against the extraterritorial application of U.S. law is based: "[T]he general and almost universal rule is that the character of an act as lawful or unlawful must be determined wholly by the law of the country where the act is done." *Id.* Since that time, this Court has consistently reaffirmed that the

presumption is directly implicated whenever a litigant attempts to apply U.S. law to *conduct* that takes place outside of the United States. See *Aramco*, 499 U.S. at 249-51 (Title VII of the Civil Rights Act of 1964 does not regulate the employment-related conduct of American firms employing American citizens abroad);[2] *Foley Bros.* v. *Filardo*, 336 U.S. 281, 285-86 (1949) (federal labor statute does not apply to impose liability on a private contractor for conduct that took place in a foreign country); *Smith* v. *United States*, 507 U.S. 197, 204 (1993) (Federal Tort Claims Act does not apply to tort claims based on acts or omissions occurring abroad).

This Court recently emphasized the importance of this principle. Observing that "United States law applies domestically but does not rule the world," *Microsoft*, slip op. at 15, and that "foreign conduct is [generally] the domain of foreign law," *id.* (quoting Brief for the United States as *Amicus Curiae* at 28, *Microsoft*, No. 05-1056), this Court held that §271(f) of the Patent Act does not apply to activity occurring abroad. In so holding, the Court reiterated the presumption that "legislators take account of the legitimate sovereign interests of other nations when they write American laws." *Id.* at 15 (quoting *F. Hoffman-La Roche Ltd.* v. *Empagran S.A.*, 542 U.S. 155, 164 (2004)).

Despite the undisputed fact that the conduct for which Petitioner, a Canadian company, is allegedly liable under CERCLA took place exclusively on foreign soil, the Ninth Circuit concluded that the presumption against extraterritoriality was not implicated at all here. The court reasoned that because the "release" of hazardous substances occurred in the United States, this case involved a purely

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[2] The Court's interpretation of Title VII in *Aramco* was superseded by Congress's enactment of the Civil Rights Act of 1991, Pub. 2, No. 102-166, 105 Stat. 1074, *as recognized in Landgraf* v. *USI Film Prods.*, 511 U.S. 244, 251 (1994). That statutory revision, however, does not undermine the presumption against extraterritoriality as invoked in *Aramco*.

domestic application of CERCLA. *Pakootas*, 452 F.3d at 1078. That reasoning, however, took no account of the critical question of whether Congress intended CERCLA to impose liability for Petitioner's wholly extraterritorial conduct. Instead, the panel simply side-stepped this issue by defining the application of CERCLA in this case as "domestic."

The ascertainment of affirmative congressional intent is a necessary prerequisite for a U.S. court to apply U.S. statutory liability to conduct that occurs entirely outside the United States. See *Aramco*, 499 U.S. at 248 (holding that the presumption applies "unless there is 'the affirmative intention of the Congress clearly expressed'") (quoting *Benz*, 353 U.S. at 147)); *Sale* v. *Haitian Ctrs. Council, Inc.*, 509 U.S. 155, 176 (1993) (affirming that the presumption requires "affirmative evidence of intended extraterritorial application"). Even in those instances in which this Court has determined that the presumption against extraterritoriality has been overcome, it has done so because it concluded that there existed an affirmative congressional decision to allow such an extraterritorial application. See, *e.g.*, *Hartford Fire Ins. Co.* v. *California*, 509 U.S. 764, 796 & n.22 (1993) (recognizing that Congress intended the Sherman Act to apply "to foreign conduct that was meant to produce and did in fact produce some substantial effect in the United States"); *Steele* v. *Bulova Watch Co.*, 344 U.S. 280, 285, 287 (1952) (concluding that "Congress intended to make the [the Lanham Act] applicable to the facts of this case.") (internal quotation mark omitted)). In this case, the Ninth Circuit conducted no such inquiry into congressional intent to apply CERCLA liability to wholly foreign conduct.

The Ninth Circuit's determination that the presumption against extraterritoriality was inapplicable in this case is directly contrary to this Court's established precedent. That flaw is responsible for more than simply a wrong result or a legal inconsistency—it carries with it significant real-world

consequences for U.S. foreign policy (and the ability of the Executive branch to effectively conduct such policy) as well as for the U.S. business community. These consequences present compelling reasons for this Court to grant certiorari in this case.

I. THE LOWER COURT'S DECISION THREATENS INTERNATIONAL DISCORD AND INTERFERES WITH U.S. FOREIGN POLICY.

The presumption against the extraterritorial application of U.S. law is designed largely to prevent "unintended clashes between our laws and those of other nations which could result in international discord." *Aramco*, 499 U.S. at 248; see also *Spector* v. *Norwegian Cruise Line Ltd.*, 545 U.S. 119, 143 (2005) (Ginsburg, J. concurring in part and concurring in the judgment) ("[B]efore reading our law 'to run interference in such a delicate field of international relations,' 'where the possibilities of international discord are so evident and retaliative action so certain' the Court should await Congress' clearly expressed instruction.") (quoting *Benz*, 353 U.S. at 147)). This rationale has roots in the twin concerns of international comity, see *F. Hoffman-La Roche Ltd.* v. *Empagran S.A.*, 542 U.S. 155, 164 (2004) ("[T]his Court ordinarily construes ambiguous statutes to avoid unreasonable interference with the sovereign authority of other nations."), and the separation of powers, see *Sale*, 509 U.S. at 188 ("[The] presumption has special force when we are construing treaty and statutory provisions that may involve foreign and military affairs for which the President has unique responsibility."). In the "presence of highly charged international circumstances," *McCulloch* v. *Sociedad Nacional de Marineros de Honduras*, 372 U.S. 10, 21 (1963), the presumption serves to prevent a court from reading a statute "so as to give rise to a serious question of separation of powers which in turn would . . . implicate[] sensitive issues of the authority of the Executive over relations with foreign nations," *N.L.R.B.* v. *Catholic Bishop of Chicago*, 440 U.S.

490, 500 (1979). These twin concerns are directly implicated in this case and compellingly support certiorari.

The Ninth Circuit's disregard of the presumption against extraterritorial statutory reach risks triggering serious diplomatic consequences. The Canadian government has already protested on international comity grounds the extension of CERCLA liability to Petitioner's exclusively Canadian operations. See Gov't of Canada's *Amicus Curiae* Brief in Support of Appellant and Reversal of the Order of the District Court, *Pakootas* v. *Teck Cominco Metals Ltd.*, 452 F.3d 1066 (9th Cir. 2006) (No. 05-35153). The reason for Canada's protest is clear: by projecting CERCLA's standards onto the sovereign territory of Canada, the panel's decision disrupts the integrity of a foreign country's environmental scheme by imposing upon it a potentially inimical set of priorities. This can only serve to harm relations between the United States and one of its most important allies. Cf. Arthur T. Downey, *Extraterritorial Sanctions in the Canada/U.S. Context*, 24 Can-U.S. L.J. 215, 215 (1998) ("[E]xtraterritoriality is an unwanted intrusion into a country's sovereignty, and Canada sometimes suffers nightmares about the firmness and durability of its own sovereignty. It naturally bristles when the ugly head of extraterritoriality appears, especially if it is an American head.").

The extraterritorial application of CERCLA also needlessly interferes with the foreign affairs prerogatives of the political branches of the U.S. government. Current U.S. foreign policy has recognized that the problem of cross-border pollution is best addressed through bilateral or multilateral diplomatic mechanisms. The reciprocal nature of the problem makes it inappropriate for resolution by the unilateral projection of the country's domestic laws onto its neighbors' territory. Instead, the United States and other countries have found it preferable, and very often successful, to pursue joint measures to reduce the overall output of pollutants into the shared natural

environment. The United States and Canada are parties to many regional and global agreements that address transboundary pollution through such cooperative efforts. See, *e.g.*, Memorandum of Intent Concerning Transboundary Air Pollution, U.S.-Can., Aug. 5, 1980, 32 U.S.T. 2521; Convention on Long-Range Transboundary Air Pollution, Nov. 13, 1979; 1978 Great Lakes Water Quality Agreement, U.S.-Can., Nov. 22, 1978, 30 U.S.T. 1383; 1972 Great Lakes Water Quality Agreement, Apr. 15, 1972, United States-Canada, 23 U.S.T. 301; 1909 Boundary Waters Treaty With Canada, U.S.-Gr. Brit., Jan. 11, 1909, 36 Stat. 2448. The United States has also been involved in numerous negotiations addressing environmental problems in specific border areas. See generally John E. Carroll, *Environmental Diplomacy: An Examination and a Prospective of Canadian-U.S. Transboundary Environmental Relations* (1983) (describing the history of U.S.-Canadian cross-border environmental diplomacy).

As a result of these agreements and negotiations, there exists a robust network of inter-governmental mechanisms dealing with the problem of cross-border contamination. Most prominently, the 1909 Boundary Waters Treaty between the United States and Canada established a bilateral International Joint Commission that is charged with resolving disputes concerning the control of boundary water quality, including transboundary pollution, and is vested with quasi-judicial, investigative and arbitral functions. The subsequent Great Lakes Water Quality Agreements have expanded the powers of the Commission, and over the years the Commission has successfully resolved a number of disputes between the two countries. See L.H. Legault, *The Roles of Law and Diplomacy in Dispute Resolution: The IJC as a Possible Model*, 26 Can.-U.S. L.J. 47, 49-54 (2000); Shawn M. Rosso, *Acid Rain: The Use of Diplomacy, Policy and the Courts to Solve a Transboundary Pollution Problem*, 8 J. Nat. Resources & Envtl. L. 421, 424-25 (1993) ("The IJC has been

an innovative approach to dealing with common problems arising on the border. In effect, it has institutionalized an acknowledgement of the importance of cooperation in addressing common environmental issues.").

Characteristic of this successful cooperative approach to transboundary pollution is the Commission's investigation, upon a joint request by the United States and Canada, of the issue of air pollution in the Detroit river area, which encompasses the metropolitan areas of Detroit, in the State of Michigan, and Windsor, in the Province of Ontario. Having concluded that the responsibility for the pollution was shared by both sides, the Commission recommended, and the United States and Canada subsequently created, a joint institution to address the problem. See Int'l Joint Comm'n, *Detroit River Area of Concern: Status Assessment* (1997), *available at* http://www.ijc.org/php/publications/html/detroit.html; Rosso, *supra*, at 424.

A similarly extensive diplomatic system of dispute resolution has been established to address pollution on the U.S. and Mexican border. See Elia V. Pirozzi, *Resolution of Environmental Disputes in the United States-Mexico Border Region and the Departure from the Status Quo*, 12 J. Envtl. L. & Litig. 371, 373-86 (1997) (discussing dispute resolution under NAFTA, North American Agreement on Environmental Cooperation and Environmental Dispute Resolution, "La Paz" Agreement Between the U.S. and Mexico on Cooperation for the Protection and Improvement of the Environment in the Border Area, and Integrated Environmental Border Plan for the Mexican-United States Border Area). These agreements have allowed the two countries to solve a number of significant environmental problems in the border area. Under the "La Paz" agreement, for instance, a collaborative effort by the U.S. and Mexico has dramatically improved air quality in the El Paso-Ciudad Juárez border region, and has substantially reduced pollution from copper smelters in Arizona in the United States and

Sonora in Mexico. See Sanford E. Gaines, *NAFTA as a Symbol on the Border*, 51 UCLA L. Rev. 143, 161 (2003); John D. Wirth, *Smelter Smoke in North America: The Politics of Transborder Pollution* 175-99 (2000).

The Ninth Circuit's extension of CERCLA liability to Petitioner's wholly foreign conduct risks disrupting these and other well-functioning diplomatic schemes. It places a matter traditionally handled through diplomacy by the Executive into the hands of individual private litigants who can unilaterally pursue CERCLA suits without any regard for the foreign policy and international environmental consequences for the nation as a whole. The firmly established presumption against extraterritorial application of federal legislation, which the Ninth Circuit refused to apply, is designed to prevent precisely this dangerous and counterproductive exercise.

Absent a clear showing of congressional intent to apply federal law abroad, the authority to resolve the sensitive problem of cross-border environmental relations is vested in the federal Executive acting through its diplomatic representatives. Such authority is an element of the President's broader power to, in the words of the Solicitor General, "promote the effective conduct of foreign relations, and underscore the United States' commitment in the international community to the rule of law." Brief for the United States as *Amicus Curiae* Supporting Petition for Certiorari at 8, *Medellin* v. *Texas*, No. 06-984.

As the Fifth Circuit has observed in an analogous situation, when considering whether to give extraterritorial application to the Marine Mammal Protection Act of 1972:

> When Congress considers environmental legislation, it presumably recognizes the authority of other sovereigns to protect and exploit their own resources. Other states may strike balances of interests that differ substantially from those struck by Congress. The traditional method

> of resolving such differences in the international community is through negotiation and agreement rather than through the imposition of one particular choice by a state imposing its law extraterritorially.

United States v. *Mitchell*, 553 F.2d 996, 1002 (5th Cir. 1977).

These mechanisms allow the Executive Branch to evaluate the nation's environmental priorities, to take account of the diplomatic sensitivities involved, and to respond in a manner that appropriately combines the determination and the flexibility necessary to solve the complex issues surrounding transboundary pollution. That responsibility, moreover, is particularly appropriate because "the President is uniquely positioned both to evaluate and resolve sensitive foreign policy issues and to act with dispatch." Brief for the United States as *Amicus Curiae* Supporting Petition for Certiorari at 12, *Medellin*, No. 06-984.

By contrast, this Court has emphasized the limited capacity of the Judicial Branch to "determin[e] precisely when foreign nations will be offended by particular acts" and has "consistently acknowledged that the nuances of the foreign policy of the United States ... are much more the province of the Executive Branch and Congress" than of the courts. *Crosby* v. *National Foreign Trade Council*, 530 U.S. 363, 386 (2000) (quoting *Container Corp. of Am.* v. *Franchise Tax Bd.*, 463 U.S. 159, 194, 196 (1983)) (internal quotation marks omitted) (alteration and omission in original).

The Ninth Circuit's failure even to consider, much less to apply the presumption against extraterritoriality in this case fosters not only unnecessary tension between governments but also inappropriate conflict between the U.S. branches of government, as the judiciary attempts to tread where it "has neither aptitude, facilities nor responsibility." *Chicago & S. Air Lines* v. *Waterman S.S. Corp.*, 333 U.S. 103, 111 (1948).

II. THE DECISION BELOW WILL HAVE SUBSTANTIAL ADVERSE CONSEQUENCES FOR THE BUSINESS COMMUNITY.

Regardless of whether the application of CERCLA in this case is labeled as "domestic" or "extraterritorial," by attaching liability to conduct that occurred wholly outside the United States, the Ninth Circuit's decision will detrimentally affect many of the Chamber's members and affiliates, as well as the U.S. business community in general. United States companies and individuals are actively engaged in business operations in the regions bordering Canada. These companies will be exposed to substantial risk if, in response to this and similar suits against its nationals, Canada retaliates by extending its own environmental laws to U.S. companies operating on the U.S. side of the border and by opening its courts to similar types of lawsuits.

The Ninth Circuit's projection of CERCLA abroad effectively subjects foreign companies operating outside the United States to the U.S. environmental regulatory regime. There is no way to escape that consequence of the Ninth Circuit's decision, given that CERCLA relies on regulating conduct that gives rise to releases of pollution. See Memorandum from Marianne L. Horinko, Assistant Administrator, U.S. EPA, to Superfund Nat'l Policy Managers, Regions 1-10 & RCRA Senior Policy Advisors, Regions 1-10, at 2-3 (Feb. 12, 2002) ("Principles for Managing Contaminated Sediment Risks at Hazardous Waste Site"); U.S. EPA, *Contaminated Sediment Remediation Guidance for Hazardous Waste Sites* § 2.6 (2005), *available at* http://www.epa.gov/superfund/resources/sediment/pdfs/guidance.pdf ("Identifying and controlling contaminant sources typically is critical to the effectiveness of any Superfund sediment cleanup.").

If private litigants are permitted to use CERCLA lawsuits to target foreign companies' operations outside of the United States, these companies will find themselves forced to

conform their conduct to U.S. environmental requirements for fear of liability. They will have to do so even if those U.S. requirements find no correlation in the domestic legislation of the country in which they operate.

As a result, Canadian companies faced with the unexpected requirement to comply not only with their country's domestic regulation but also with CERCLA (and, potentially, other U.S. environmental statutes) when acting solely on Canadian soil will have every incentive to pressure their government to respond. See Austen L. Parrish, *Trail Smelter Déjà Vu: Extraterritoriality, International Environmental Law, and the Search for Solutions to Canadian-U.S. Transboundary Water Pollution Disputes*, 85 B.U. L. Rev. 363, 414 (2005) ("Little reason exists to believe that Canada would not ultimately respond similarly if the U.S. CERCLA laws are read to apply extraterritorially to Canadian companies doing business solely in Canada."). The Ninth Circuit's insistence that this case involves only a "domestic" application of CERCLA is cold comfort to Canadian companies and is unlikely to alleviate this cross-border tension, given that under that court's approach CERCLA liability can attach to conduct exclusively outside the United States.

In response, Canada could very well try to "level the playing field" between companies on either side of the border by imposing corresponding liability on companies operating within U.S. territory whenever their operations produce pollution that later ends up in Canada. Canada already contends that pollutants released by some U.S. companies migrate across national boundaries and account for air and water pollution in certain regions of Canada. See Env't Can., *Comments on the U.S. EPA's Proposed National Emission Standards for Hazardous Air Pollutants* (Mar. 30, 2004), *available at* http://www.ec.gc.ca/mercury/en/mcepa.cfm# ECC (reporting that 10 percent of the mercury deposited in Canada each year comes from U.S. sources); Michael S. McMahon, *Balancing the Interests: An Essay on the*

Canadian-American Acid Rain Debate, in International Environmental Diplomacy: The Management and Resolution of Transfrontier Environmental Problems 147, 147 (John E. Carroll ed., 1988) ("The issue [of acid rain] has been identified by Canada's minister of the environment as the 'single most important irritant in US-Canadian relations.'"). If Canada wishes to retaliate for the Ninth Circuit's unwarranted intrusion into its sovereignty, it will find an easy basis under that court's reasoning for imposing liability upon U.S. businesses. The risk that Canada would open the door to proceedings against U.S. companies, premised on the U.S. companies' failure to comply with Canadian environmental standards in their domestic U.S. activities, will severely undermine business confidence.

The resulting instability in the governing regulatory framework likely will disrupt existing projects in the border regions and deter companies from undertaking new ones. The need to become familiar with foreign laws and regulations, and to conform domestic company activities to these requirements, would impose a significant informational and operational cost on all businesses in the border regions. Likewise, the prospect of inconsistent lawsuits and liability verdicts would inflict considerable damage on the economic cooperation between the United States and Canada and decrease the prospects for bilateral investment.

Furthermore, the Ninth Circuit's extraterritorial application of CERCLA is potentially unbounded. If CERCLA liability can attach any time pollution eventually ends up in the United States regardless of its source, it could be easily extended to cover air and water pollution emanating from non-border countries. Cf. Rebecca Renner, *Science News: Asia Pumps Out More Mercury than Previously Thought*, Envtl. Sci. & Tech. Online (American Chemical Society), Jan. 5, 2005, *available at* http://pubs.acs.org/subscribe/journals/esthag-w/2005/jan/science/rr_asia.html (discussing scientific investigation of long-range transport of atmospheric

pollutants from Asia); Nordic Council of Ministers, *Lead Review* 11 (2003) (reporting to the United Nations Environment Programme on the long-range air transport of lead emissions); Nordic Council of Ministers, *Cadmium Review* 9 (2003) (reporting on the long-range air transport of cadmium). Given the sweeping nature of cross-border contamination, a limitless range of foreign companies operating solely on foreign soil could be captured by the Ninth Circuit's expansive interpretation of our domestic laws. Correspondingly, the Ninth Circuit's rationale would permit any foreign nation that can trace at least some of its environmental pollution to economic activity occurring in the United States to subject the alleged polluter to protracted litigation and potential liability in that country. The risk of retaliation against U.S. companies thus extends well beyond the United States' closest neighbors.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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